

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG EUGENE MOORE, JR.,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 274713

Berrien Circuit Court

LC No. 2006-404582-FH

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of and sentences for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and maintaining a drug vehicle, MCL 333.7405(1)(d), entered after a jury trial. Because sufficient evidence supported defendant's convictions and defendant is not entitled to appellate review of his statutory guidelines sentences, we affirm.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of possession with intent to deliver marijuana are: (1) defendant knowingly possessed a controlled substance, (2) defendant intended to deliver the controlled substance to someone else, and (3) defendant was aware that the controlled substance was marijuana. *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005). Possession of a controlled substance exists when a defendant has dominion or control over the substance with knowledge of its possession or character. *People v Nunez*, 242 Mich App 610, 615; 618 NW2d 550 (2000). Possession of a controlled substance may be actual or constructive. The critical question is whether the defendant had dominion or control over the substance. Mere presence is insufficient. Some additional link between the defendant and the controlled substance must be shown. Circumstantial evidence and reasonable inferences drawn from the evidence are

sufficient to prove possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

A person may not knowingly keep or maintain a vehicle for the purpose of keeping or selling controlled substances. To keep or maintain is to cause to continue. Keeping or maintaining a vehicle for the purpose of selling controlled substances implies usage with some degree of continuity. The vehicle need not have been used exclusively for the purpose of selling controlled substances, but this use must have been a substantial purpose that was in some degree continuous. The determination of the purpose and continuity of the vehicle's use must be ascertained under the totality of the circumstances. *People v Thompson*, 477 Mich 146, 152-158; 730 NW2d 708 (2007).

Defendant argues that the evidence presented at trial was insufficient to support his convictions of possession with intent to deliver marijuana and maintaining a drug vehicle. The evidence police found in the Taurus¹ on August 24, 2006, was located in a box from a cell phone belonging to defendant. Officers observed defendant sitting in the car in close proximity to the marijuana. Two witnesses testified that defendant claimed ownership of the substance, and that he knew that the substance was marijuana. The jury was entitled to accept this testimony, and to reject defendant's testimony denying ownership of the marijuana. *Milstead, supra* at 404. Seals identical to those officers found in the box were found in defendant's tennis shoes. Admissible circumstantial evidence supported the conclusion that defendant had at least constructive possession of the marijuana. The fact that the jury might have had to make multiple inferences from this evidence does not negate the sufficiency of the evidence. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). A police witness who testified as an expert opined that the marijuana was packaged in a manner that indicated intent to sell. The evidence, both direct and circumstantial, was sufficient to support defendant's conviction of possession with intent to deliver marijuana. *Williams, supra* at 419-420; *Fetterley, supra* at 515.

Sufficient direct and circumstantial evidence also supported defendant's conviction of maintaining a drug vehicle. The evidence showed that on three occasions spanning a 14-month period, police discovered defendant in or in close proximity to the Taurus when marijuana was found in the car. On June 8, 2005, police observed defendant tossing a baggie into the car. A search of the car revealed marijuana located in a baggie. On April 27, 2006, police found marijuana in the car, and found defendant in possession of cell phones and a large amount of cash. On August 24, 2006, police found defendant sitting in the car in close proximity to a box containing marijuana and a large amount of cash. Two witnesses testified that defendant admitted that the marijuana found in the box belonged to him. In addition to this evidence, police officers observed defendant driving the Taurus on several occasions. We conclude that under the totality of the circumstances, the evidence demonstrated that defendant used the Taurus with some degree of continuity for the purpose of selling marijuana. *Thompson, supra* at 152-158. This conviction was supported by sufficient evidence. *Bulls, supra* at 623.

¹ This vehicle was titled in the name of defendant's girlfriend, Tracy Apanavicius.

Next, defendant argues that he is entitled to appellate review of his sentences, notwithstanding the fact that his minimum terms were within the statutory sentencing guidelines. The interpretation and application of the statutory sentencing guidelines are legal questions that we review de novo on appeal. *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003). Under the sentencing guidelines act, if a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence, and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A party may not raise on appeal an issue challenging the scoring of the guidelines or the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand. *Id.*

Specifically, defendant asserts that MCL 769.34(10) is unconstitutional as a violation of the separation of powers and due process of law. But in *People v Garza*, 469 Mich 431, 435; 670 NW2d 662 (2003), our Supreme Court specifically considered and rejected this argument. *Garza, supra*, is binding on this Court, thus, this issue is without merit. See *People v Beasley*, 239 Mich App 548, 559; 609 NW2d 581 (2000).

Affirmed.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto